

EXHIBIT A

Transcript of Sentencing Proceeding

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Sentence

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

18 Cr. 0620 (KMW)

5 MUNISH SOOD,

6 Defendant.

7 -----x

8
9 September 12, 2019
12:10 p.m.

10 Before:

11 HON. KIMBA M. WOOD,

12 District Judge

13
14 APPEARANCES

15 GEOFFREY S. BERMAN

16 United States Attorney for the
Southern District of New York

17 BY: NOAH SOLOWIEJCZYK

ROBERT BOONE

ELI MARK

18 Assistant United States Attorneys

19 PEPPER HAMILTON, LLP

Attorneys for Defendant

20 BY: RICHARD J. ZACK

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1 THE COURT: At this point, I call U.S. v. Munish Sood,
2 and I'll ask counsel to identify themselves for the record.

3 MR. SOLOWIEJCZYK: Good afternoon, your Honor. Noah
4 Zolowiejczyk on behalf of the government. I'm joined at
5 counsel table by A.U.S.A.s Robert Boone and Eli Mark.

6 MR. ZACK: Good afternoon, your Honor. Richard Zack
7 for Munish Sood.

8 THE COURT: Good afternoon.

9 And good afternoon, Mr. Sued.

10 THE DEFENDANT: Good afternoon, your Honor.

11 THE COURT: We are here for the sentencing of
12 Mr. Sood.

13 And I'll begin by asking Mr. Zach, have you and your
14 client had an adequate opportunity to review the presentence
15 report?

16 MR. ZACK: We have, your Honor.

17 THE COURT: And do you wish any changes?

18 MR. ZACK: No, your Honor.

19 THE COURT: All right. Before I hear from counsel,
20 I'd like to note that Mr. Sood's assistance to the government
21 has been enormously helpful, to whom I note that he testified
22 at great length at two trials, one of them for three days of
23 testimony, and he worked with the government for many, many
24 hours on the case. Particularly in light of that, but also in
25 light of the light sentences received by the codefendants who

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1 have been sentenced to date, I will not impose an incarceratory
2 sentence on Mr. Sood. I am interested, however, in what was
3 his impetus for the crime. Was it financial or nonfinancial?

4 In any event, I am now ready to hear from defense
5 counsel and Mr. Sood, if he wishes to be heard.

6 MR. ZACK: Thank you, your Honor, and I'll speak
7 briefly and then Mr. Sood does wish to be heard.

8 And to answer your Honor's question, certainly there
9 was a financial motive for the crime here, but I would note
10 that Mr. Sood accepts full responsibility for what he did.

11 THE COURT: I'm sorry to interrupt you.

12 You say there was a financial motive, and that's what
13 puzzles me because he was earning 7 to \$8 million a year during
14 the time of the conspiracy, as I read the documents.

15 Is that wrong?

16 MR. ZACK: Your Honor, that's what the PSR reflects.
17 His income has significantly decreased since then.

18 THE COURT: Since the arrest.

19 MR. ZACK: And I have had many, many conversation with
20 Mr. Sood over the last two years.

21 As your Honor knows, this case involved him providing
22 services to very high-profile athletes and him being involved
23 in many aspects of the NBA. And so, you know, part of the
24 crime and part of the sort of seductiveness of the crime was
25 being involved with such a high-profile lifestyle. And while

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1 Mr. Sood did not certainly need additional money to support his
2 lifestyle, I think he was seduced by the fact that he would be
3 in close proximity to some of the most high-profile, popular
4 athletes on the planet.

5 And that's really borne out by the fact that the way
6 the business was set up, Mr. Sood didn't stand to make any
7 money at all for many, many years. He started the business in
8 2016. And the way the business works is until an athlete gets
9 a second contract -- and that's several years -- at least four
10 years into their NBA career -- Mr. Sood didn't stand to really
11 make any money on that. Now, there was a financial reward down
12 the road for him, absolutely, and certainly Mr. Sood
13 anticipated that, but I think, you know, his driving motive was
14 to be a part of, you know, an enterprise that had, you know,
15 literally tens of millions of people watching it during
16 basketball season. And, you know, I think that is the
17 overriding motive of him getting involved in this.

18 He was not -- the evidence showed he was not sort of
19 the mastermind behind this. He was following instructions from
20 others. That's not to diminish the fact that he's responsible
21 for his own conduct, but as the evidence shows, he was
22 certainly a person on the lower end of the culpability scale.

23 And, your Honor, if that answers your question, I am
24 happy to just highlight just a couple of brief things. As I
25 said --

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1 THE COURT: It does. Thank you. Go ahead.

2 MR. ZACK: Mr. Sood accepts full responsibility. As
3 your Honor knows, he met with the government shortly after his
4 arrest, and I know I was in talking to the government within a
5 couple of days of his arrest to let them know that he was ready
6 to cooperate.

7 As you know from our filings, he has lived an
8 exemplary life otherwise other than this. He has built a
9 business that has suffered significantly from, you know, his
10 own conduct here, which he doesn't deny, and has raised a
11 tremendous family. He has three kids and a wife that support
12 him, and he maintains significant confidence from the business
13 people that he has been working with over the years.

14 And we appreciate your Honor's advising us that
15 sentence will not include incarceration. We agree that
16 probation is certainly an appropriate sentence in this case.

17 Thank you, your Honor.

18 THE COURT: Thank you very much.

19 Mr. Sood, there is no requirement for you to speak,
20 but if you would like to speak, I would be glad to hear you
21 now.

22 THE DEFENDANT: Thank you, your Honor.

23 Can you hear me?

24 THE COURT: Yes. Thank you.

25 THE DEFENDANT: I'm just a bit nervous and I just put

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1 some notes on a piece of paper.

2 THE COURT: That is fine. Go ahead.

3 THE DEFENDANT: I would like to apologize to the Court
4 and to the people that I hurt for the last few years. I've
5 disappointed my friends, my family and myself. I have no one
6 to blame but myself for these actions.

7 I fully accept responsibility for my actions. I will
8 continue to do what is necessary to rebuild the trust of my
9 friends, my family, my clients, and everyone else I've
10 disappointed.

11 I am happy to answer any questions, but thank you
12 again.

13 THE COURT: Thank you for that statement. I have no
14 questions.

15 Before I turn to the government to see if they wish to
16 speak, I would like to note that I find the calculation of
17 restitution here to be to my mind conceptually problematic, and
18 I'll explain that in a while, but I also note that the
19 government has asked for three months. I think you have, or do
20 you just not need it any more?

21 MR. SOLOWIEJCZYK: Your Honor, as to restitution, we
22 are asking for additional time. We have -- we notice at least
23 as to one university, the amount of restitution they are
24 seeking -- that is the University of Louisville -- it is going
25 to be joint and several liability with the defendants who were

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1 before Judge Kaplan, but there are just two other universities
2 that we are still waiting to get final word from and I hope to
3 do that soon, and once we do, we will submit a proposed
4 restitution order to your Honor.

5 THE COURT: OK. Then I'll turn to you,
6 Mr. Zolowiejczyk, to tell me anything the government wishes to
7 add.

8 MR. SOLOWIEJCZYK: Your Honor, I'll keep this quite
9 brief in light of your Honor's informing us that a sentence of
10 incarceration -- there will not be a sentence of incarceration.

11 I would just state very briefly, under the 5K factors,
12 certainly Mr. Sood's sentencing -- his cooperation was
13 extremely timely. He indicated very early on that he intended
14 to cooperate. He came in and proffered with us quickly, and he
15 was proffering and working with us well before any of the
16 trials that occurred here took place, well before any guilty
17 pleas.

18 With respect to his truthfulness and reliability, he
19 was forthcoming in the proffer sessions. He told us not only
20 about conduct that we already knew about from the wiretap of
21 his phone and the other evidence but also additional conduct
22 that we were not aware of before he informed us of it, and he
23 was forthcoming and truthful during all phases of both the
24 proffers and the trial preparation.

25 With respect to significance and usefulness, which,

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1 you know, here it is a particularly important factor, Mr. Sood
2 was the only cooperating witness that testified at both the
3 Gatto trial in front of Judge Kaplan and the trial of Christian
4 Dawkins and Merl Code in front of Judge Ramos. And he was an
5 important witness in both trials, a crucial witness.
6 Particularly just focusing on the more recent trial of
7 Christian Dawkins and Merl Code, he was the only witness at
8 that trial who was a member of the conspiracy. And he was on
9 the stand, as your Honor noted, for testimony that spanned
10 three days, really covering all of the aspect of the scheme --
11 each of the coaches they had worked with, hours and hours of
12 recordings. At times these recordings were somewhat hard to
13 understand, cryptic. He really, at bottom, acted as sort of
14 the narrator of what had happened for the jury and was an
15 incredibly important witness.

16 So, for all of those reasons, your Honor, at this time
17 we would move under Section 5K1.1 for the appropriate
18 reduction.

19 THE COURT: All right. Thank you.

20 I begin, as I must, by noting the sentencing guideline
21 calculation. It's based on a total offense level of 21 and
22 Criminal History Category of I. If I were sentencing Mr. Sood
23 under the Sentencing Guidelines, I would depart downward based
24 on his substantial assistance to the government.

25 Moving to the factors under Section 3553, the

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1 co-conspirators' conduct was quite serious in ways that are not
2 measured by pecuniary loss, in particular, harm to the
3 reputations of the universities and their athletic programs.

4 With respect to Mr. Sood, I agree with Mr. Zach that
5 he was not an instigator, he was not a major participant.

6 With respect to Mr. Sood's character, everything in
7 his background suggests an upstanding, honest man. I believe
8 that his, as Mr. Zach put it, seduction by the prospect of
9 having such high-profile clients was an aberration in an
10 otherwise blameless life.

11 His very prompt, very painstaking assistance to the
12 government, which included crimes as to which the government
13 was not yet aware and which was enormously useful to the
14 government in light of the fact that with respect to the trial
15 of Mr. Dawkins and Mr. Code, he was the only member of the
16 conspiracy who testified, and his use to the government was, as
17 the government said, as narrator to what happened in light of
18 the cryptic nature of a number of the wiretaps -- wiretapped
19 conversations.

20 In my view, as I said before, no incarceration is
21 warranted.

22 Mr. Sood, could you please stand for sentencing.

23 With respect to all three counts, I sentence you to no
24 incarceration, to no supervised release, because you have
25 essentially been on such for the time you were cooperating.

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1 A fine of \$25,000 was recommended by Probation. Do
2 defense counsel or defendant have a problem with that?

3 MR. ZACK: Your Honor, I think we certainly don't
4 disagree with the recommendation. Just for the record, I don't
5 believe a \$25,000 fine is warranted, but that's all we have to
6 say on that issue.

7 THE COURT: Would the government like to be heard on
8 the fine?

9 MR. SOLOWIEJCZYK: Your Honor, we don't really take a
10 position as to the specific parameters of the sentence, but
11 obviously Probation does take into account, among other things,
12 the means to pay it and that sort of thing.

13 MR. ZACK: Your Honor, just given the prospect of
14 restitution, you know, I would suggest not imposing a fine
15 and --

16 THE COURT: With respect to the prospect of
17 restitution, I'm not so sure we have that prospect, as I'll lay
18 out in a few minutes.

19 MR. ZACK: Thank you, your Honor.

20 THE COURT: I will impose the fine of \$25,000 in light
21 of Mr. Sood's financial ability to pay it and the purposes
22 behind imposing a fine. I've taken into account all the
23 statutory factors that the statute requires in determining the
24 amount of the fine.

25 With respect to restitution, I'll deal with that in a

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1 minute.

2 I impose the special assessment of \$300, which is
3 mandatory.

4 You may sit down while I read to you the appeal
5 rights.

6 Are there any charges to be dismissed?

7 MR. SOLOWIEJCZYK: We don't think there are, your
8 Honor, but in an abundance of caution, to the extent there were
9 any, they are dismissed.

10 THE COURT: I grant the motion.

11 Is there anything further before I read Mr. Sood his
12 appeal rights, once I get to restitution?

13 MR. ZACK: Not from the defendant, your Honor.

14 THE COURT: OK.

15 MR. SOLOWIEJCZYK: Not from the government, your
16 Honor.

17 THE COURT: All right. I'll read your appeal rights
18 after I discuss restitution.

19 In considering who was harmed by the conspiracy, I
20 note that it was spearheaded by Adidas, and Adidas, I take it,
21 was motivated by hoping to receive a competitive advantage over
22 competitors by having high-profile athletes involved in its
23 programs.

24 I think it's possible -- no, I have to back up a
25 moment.

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1 I think the universities benefited from these
2 scholarship payments made to athletes because they got the
3 benefit of a good bargain. They had the star athlete for about
4 a year. So they had the benefit hoped for, a more brilliant
5 team, which leads to greater alumni contributions. I mean, if
6 you try to find something financial, you would have to go down
7 that rather circuitous route.

8 I don't think Mr. Sood or any of the defendants
9 intended to harm a university. As one of the university
10 defendants described in a letter to the Court, the harm was
11 reputation. I think the harm was that the university becomes
12 publicized as a participant in corruption, corruption of
13 college athletics.

14 The only harm I can see to a university would be by
15 analogy to honest services fraud. A university was unaveraged
16 coaches, not the other participants. The universities were
17 deprived of the honest services of their coaches.

18 I don't think that is properly quantified by the
19 amount of a bribe paid to a coach. But we have as precedent a
20 decision by Judge Cote in which she found that Morgan Stanley,
21 I think, or Morgan Guaranty had been deprived of the honest
22 services of one of its corrupt employees, and she imposed as
23 restitution the expenses and fees paid by Morgan Stanley in
24 connection with the government investigation and prosecution.
25 That's not what is charged here, but it strikes me as the only

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1 rationale I can conceive of for there being pecuniary harm to
2 the universities.

3 I'm not asking anyone to respond right away on this
4 because I don't think other courts have made a fuss about it,
5 and so you need some time to think about it?

6 MR. SOLOWIEJCZYK: Your Honor, I do think we probably
7 are going to want to write something briefly on this.

8 I would note, obviously, we respect what your Honor is
9 saying immensely. You know, a lot of the issues your Honor has
10 teed up were issues that were argued -- and this really only
11 relates to the Gatto case for trial.

12 THE COURT: Before Judge Kaplan.

13 MR. SOLOWIEJCZYK: They were argued to the jury, and,
14 you know, the jury ultimately concluded that when these
15 university witnesses took the stand and said that, you know,
16 that these representations were material to them, that the
17 universities did suffer harm as a result of this, that's
18 ultimately about something the jury has to consider.

19 I will also note just for your Honor's
20 consideration -- we're going to brief this more fully -- that
21 there are many, many talented student athletes out there, and
22 when these universities choose -- they have a limited number of
23 scholarships. There is sort of an opportunity cost to that,
24 and in particular when they have decided to issue a scholarship
25 to a student athlete who it turns out they later find is

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ineligible, they could have offered that scholarship to somebody else instead and they lose that opportunity.

THE COURT: I think that's a very good point, and what's lost is the ability to have the next best athlete for years two, three, four. It is not about the first year.

MR. SOLOWIEJCZYK: One of the athletes never even played that first year because the scheme was uncovered and they had to send him out and, therefore -- and actually --

THE COURT: And he kept the money?

MR. SOLOWIEJCZYK: Well, yes.

THE COURT: He continued to go to school?

MR. SOLOWIEJCZYK: And the way the University of Louisville calculated their number was it wasn't legal fees, it wasn't the full amount of scholarship, it was they actually did math on how much money they had spent up to that point on that particular student.

But as I said, your Honor, we're happy to put --

THE COURT: I mean, that's very understandable.

MR. SOLOWIEJCZYK: -- something in on this.

As to the coach side of this, if any of those schools do seek restitution, what we had in mind is exactly consistent with what -- I don't remember the name of the decision but I know the decision you are talking about from Judge Cote, it would be consistent with that.

THE COURT: OK. With respect to what a jury found, I

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1 would need to hear how they were instructed. I doubt that I'll
2 gain a lot of clarity from it, but I respect your view that it
3 is something to think about.

4 All right. In terms of briefing, perhaps we could set
5 a schedule, and I'll let the government go first on this.

6 MR. SOLOWIEJCZYK: Your Honor, we would -- I'm just
7 thinking in terms of timing. We want to find out whether the
8 other two universities are going to even seek restitution,
9 because that would be an issue we need to brief.

10 I wanted to check when the sentencings of the
11 codefendants are.

12 (Pause)

13 THE COURT: Is it just Mr. Gassnola?

14 MR. SOLOWIEJCZYK: No. Actually, Mr. Gassnola was
15 sentenced on Tuesday, your Honor, to time served by Judge
16 Kaplan. It is Mr. Code and Mr. Dawkins in the second trial.

17 If your Honor would give us 45 days, we would
18 appreciate it, but if not, 30 days would be what we would ask
19 for.

20 THE COURT: I don't need to decide this until 90 days
21 from now, so 45 is fine.

22 MR. SOLOWIEJCZYK: Great. Thank you, your Honor.

23 THE COURT: OK. I ask you if you have the transcript
24 of the argument before Judge Kaplan, I would like to read that,
25 the one you referenced. You said these points were argued to

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1 Judge Kaplan. Perhaps they were argued in writing.

2 MR. SOLOWIEJCZYK: We can send you the sentencing
3 transcript, and I was actually referring also to sort of the
4 harm to the universities was an issue that was central to the
5 trial as well, not as to a specific restitution number but it
6 was sort of an essential component of the trial.

7 THE COURT: OK.

8 MR. SOLOWIEJCZYK: But I'm not sure -- I hear what
9 your Honor is saying in terms of -- you know, I'm not sure how
10 useful that will ultimately be to your Honor, so that is
11 something that we will consider.

12 THE COURT: All right. I was assuming that arguments
13 by counsel in a high-profile criminal case would be carefully
14 considered and that I should consider them, too.

15 MR. ZACK: Judge, just so the record is clear, we were
16 not a party to that, you know. So whatever was argued in that
17 case is not relevant to a restitution determination for this
18 defendant in our view.

19 THE COURT: It merely might educate me generally
20 rather than -- I understand it --

21 MR. ZACK: But we have no say in anything the Court
22 determines.

23 THE COURT: I know that.

24 MR. ZACK: Thank you, your Honor.

25 MR. SOLOWIEJCZYK: Your Honor, we'll provide you with

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1 anything we think would be relevant to your Honor's
2 consideration of this question in our submission.

3 THE COURT: Good. All right. If there is nothing
4 further, I'll read Mr. Sood his appeal rights.

5 Is there something further?

6 MR. ZACK: Nothing from the defendant.

7 THE COURT: Mr. Sood, it is my job -- you don't need
8 to stand. Thank you. It is my job to read every defendant his
9 appeal rights, and I'll read you yours now.

10 You can appeal your conviction if you believe that
11 your guilty plea was somehow unlawful or involuntary or if
12 there was some other fundamental defect in the proceedings that
13 was not waived by your guilty plea. You also have the
14 statutory right to appeal your sentence under certain
15 circumstances. You may have waived many of those rights.

16 With few exceptions, any Notice of Appeal must be
17 filed within 14 days of judgment being entered in this case.
18 Judgment is likely to be entered next week.

19 I understand this doesn't apply to you but, again, it
20 is my job to read it. If you are not able to pay the cost of
21 an appeal, you may apply for leave to appeal in forma pauperis.
22 If you request, the Clerk of the Court will prepare and file a
23 Notice of Appeal on your behalf.

24 I think your assistance was truly commendable.

25 We are adjourned.

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MR. SOLOWIEJCZYK: Thank you, your Honor.

(Adjourned)